that an order barring a party from filing a lis pendens is a preliminary injunction, and further held that "[c]ancellation of a notice of lis pendens [is] appealable under the collateral order exception to the final judgment rule". In doing so the Eighth Circuit cited its prior decision in *Keith v. Bratton*, 738 F.2d 314, 316 (8th Cir. 1984), which also held that an order canceling a lis pendens is directly appealable. Both of these decisions were made after *Carson v. Am. Brands, Inc.*, 450 U.S. 79 (1981). Likewise, the Seventh Circuit has held that an order canceling a lis pendens is directly appealable, stating that "in our view the lis pendens issue is substantially separate from the basic issue presented in the complaint and the judgment is final under 28 U.S.C. §1291." *Suess v. Stapp*, 407 F.2d 662, 663 (7th Cir. 1969). The Ninth Circuit, of course, does not agree with the view that an order canceling or prohibiting a notice of lis pendens is directly appealable. *See Orange Cty., California Airport Assoc. v. Hongkong and Shanghai Banking Corp.*, 2 F.3d 821 (9th Cir. 1995).

Therefore it is absolutely clear that under the specific holdings of the Eighth and Seventh Circuits, an order canceling a lis pendens and prohibiting filing of future lis pendens would be appealable under 28 U.S.C. §1291 or the collateral order doctrine, while under the Ninth Circuit's precedent, such an order is not appealable. Under the interpretation of this Court's decision in *Carson* employed by the Third and Ninth Circuits, any order which did not grant relief requested by the moving party in its complaint would not be appealable under 28 U.S.C. §1291 or the collateral order doctrine. The

approach of the Third Circuit. *AmSouth Bank v. Dale,* 386 F.3d 763, 772-774 (6th Cir. 2004); *MAI Basic Four, Inc. v. Basis, Inc.,* 962 F.2d 978, 981-3 (10th Cir. 1992). Since this Court's decision in *Carson,* the Second, Fifth, Seventh and Federal Circuit have also allowed appeals from district court orders which prohibit or restrict the use of state court remedies, whether or not such relief is requested by the moving party in its complaint. *See HBE Leasing Corp v. Frank,* 48 F.3d 623, 632 n.6 (2d Cir. 1995); *Phillips v. Chas. Schreiner Bank,* 894 F.2d 127, 130 (5th Cir. 1990); *Asset Allocation & Mgmt. Co. v. W. Employers Ins. Co.,* 892 F.2d 566, 568 (7th Cir. 1989); *Katz v. Lear Siegler, Inc.,* 909 F.2d 1459, 1461 (Fed. Cir. 1989).

V. Basis for Jurisdiction

Respondent argues that the correct basis for jurisdiction by this Court over the Ninth Circuit's judgment is 28 U.S.C. §1254(a). Petitioners have no objection to this assertion of this Court's basis of jurisdiction.

CONCLUSION

The petition for certiorari should be granted for the reasons stated in the petition and in this reply.

Respectfully submitted this April 20, 2006 by:

Cyrus Sanai

Vivera Sanai